IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.04.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. TAMILVANAN

SPECIAL TRIBUNAL APPEAL Nos.7 to 20, 22 of 2003 & 1 of 2004 and

CONTEMPT PETITION No.540 of 2004

and connected miscellaneous petitions.

..

S.T.A.No.7 of 2003:

M/s. Panchura Estate Ltd.,
Bitherkad rep. By its
Managing Director
V.K. Mehta. .. Appellant

vs.

1.The Tahsildar, Pandalur
The Nilgiris District.

2.The District Forest Officer
Gudalur Division
Gudalur, The Nilgiris. .. Respondents

STA 8 of 2003

R.N. Murugesan (Since Deceased)
Babu Jacob
Nadikunnal House, Chakkalakuthu
Nilambur, Malapuram District
Kerala ... Appellants

Vs

The District Forest Officer,
Gudalur. ... Respondent

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

STA 9 of 2003

K.T. Veerankutty Hajee
S/o. Kunjili Hajee
Malapuram District, Kerala ... Appellant

Vs

1. The District Forest Officer
Gudalur.

2. K. Thangaraj
S/o. Karuppaswamy
6/210-62 Gandhi Nagar,
Choondi O Valley Post
Gudalur, the Nilgiris

3. A.M. Moideen Kutty
S/o. Mammadunni
Athimannil Gouse, Nilambur
Malapuram District ... Respondents

STA 10 of 2003

K.T. Veerankutty Hajee
S/o. Kunjili Hajee
Malapuram District
Kerala ... Appellant

Vs

The Tahsildar
Gudalur
The Nilgiris. ... Respondent

STA 11 of 2003

R.N. Murugesan (Since Dead)
Babu Jacob
S/o. Late N.V. Jacob
Nadikunnal House
Chakkalakuthu
Nilambur, Malapuram District
Kerala ... Appellant

Vs

The Tahsildar
Gudalur. ... Respondent

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

STA 12 of 2003

1. Koya Moideen
S/o. Chamathi Mayin
Makkankot House
Karanthoor Post,
Kunnamangalam Via
Calicut.

2. Amina
W/o. Late Mohammed
Puthiyotti House
Karanthoor Post
Calicut.

3. Katheeja
W/o.Ali
Chalil House
Kottaparamba Post
Chelavoor
Calicut.

4. Ayisha
W/o. Mohammed Kutty
Chanath House
Karanthoor.

5. Imbichi Beevi
W/o. K.G. Aboobacker
Shahul Juda,
Koolimad, REC-Via
Nairkuzhi Post, Calicut.

6. Moosa
S/o. Champath Mayin
Chanath House
Karanthoor, Calicut.

7. Siddique
S/o. Chamath Mayin
Chanath House
Karanthoor, Calicut
appellants 1 to 7 represented by their
power of Attorney Marakkar the 8th Appellant

8. Marakkar
S/o. Chjamath Mayin
Chanath House
Karanthoor, Calicut. ... Appellants

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Vs

The District Forest Officer
Gudalur ... Respondents

STA 13 of 2003

T.K. Mohammed Hajee
S/o. Masood
Malapuram District, Kerala ... Appellants

Vs

The District Forest Officer
Gudalur The Nilgiris ... Respondents

STA 14 of 2003

1. Eranujikkal Veerankutty
s/o. Koyamu
Mampad, Malapuram

2. K.K. Ithapiri
S/o. Kurian
Kallapara House, Ellumalai

3. K. Ganagatharan
S/o. Krishnan Nair
Girija Nivas
Gudalur the Nilgiris
rep by their power of
Attorney C. Marakkar ... Appellants

Vs

1. The District Forest Officer
Gudalur.

2. S. Shanmugam
S/o. Chinna Karuppan
11/231 Calicut Road,
Gudalur Bazaar
The Nilgiris. ... Respondents

STA 15 of 2003

T.K. Mohammed Hajee
S/o. Masood
Malapuram District. ... Appellant

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Vs

1. The Tahsildar
Gudalur the Nilgiris

2. K. Thangaraj
S/o. Karuppuswamy
6/210-62 Gandhi Nagar
Choondi O Valley Poste
Gudalur the Nilgiris ... Respondents

STA 16 of 2003

1. Eranujikkal Veeran kutty
S/o. Koyamu
Mampad, Malapuram

2. K.K. Ithapin
S/o. Kurian
Kallapara House, Ellumalai

3. K. Ganagatharan
S/o. Krishnan Nair
Grija Nivas
Gudalur the Nilgiris
rep by their power of Attorney
C. Marakkar ... Appellants

Vs

1. The Tahsildar,
Gudalur. ... Respondent

STA 17 of 2003

1. Koya Moideen
S/o. Chamathi Mayin
Makkankot House
Karanthoor Post,
Kunnamangalam Via
Calicut.

2. Amina
W/o. Late Mohammed
Puthiyotti House
Karanthoor Post
Calicut.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

3. Katheeja
W/o. ali
Chalil House
Kottaparamba Post
Chelavoor
Calicut.

4. Ayisha
W/o. Mohammed Kutty
Chanath House
Karanthoor.

5. Imbichi Beevi
W/o. K.G. Aboobacker
Shahul Juda,
Koolimad, REC-Via
Nairkuzhi Post, Calicut.

6. Moosa
S/o. Champath Mayin
Chanath Hiouse
Karanthoor, Calicut.

7. Siddique
S/o. chamath Mayin
Chanath House
Karanthoor, Calicut
appellants 1 to 7 represented by their
power of Attorney Marakkar the 8th Appellant

8. Marakkar
S/o. Chamath Mayin
Chanath House
Karanthoor, Calicut. ... Appellants

Vs

The Tahsildar
Gudalur ... Respondents

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

STA 18 of 2003

1. Velayuthan Nair
2. Neelakandan Nambothiri
3. Vallikattu Raman
4. Krishnan Nambothiri
1 to 4 appellants rep by their Power of Attorney
agent K.A.Jose,
S/o. K.A. Antony
Kavalakkat House,
Kurumbarpet Estate
Chercumalli Po. Gudalur ... Appellants

Vs

1. The District Forest Officer
Gudalore

2. The Assistant Settlement Officer
Dharapuram.

3. Velukutty rep by his power of Attorney
agent, Mookiah
s/o. Chinniah
D.No.10/380C Ootty
Mysore Road,
Gudalore. ... Respondents

STA 19 of 2003

1. Valayudhan Nair
2. Neelakandan Namboothiri
3. Vallikattu Raman
4. Krishnan Namboothiri
Appellants 1 to 4 rep by
their Power of Attorney
Agent Mr.K.A. Jose
S/o. K.A. Antony
Kavalakattu House
Karumbepet Estate
Cherumuli Post
Gudalore ... Appellants

VS

1. The Tahsildar
Gudalore, The Nilgiris

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

2. The Assistant Settlement Officer,
Dharapuram

3. Velukutty
rep by his power of Attorney
Mr. Mookaiah
S/o. Chinniah
D.No.10/380C Ooty
Mysore Road, Gudalore ... Respondents

STA 20 of 2003

1. Smt. Valasala
W/o. Balagangadharan Nair

2. Smt. P. Rajani
3. Smt. P. Radhika
4. Smt. P. Rekha
2 to 4 daughters of
Balagangadaran Nair

5. P. Ramesh
6. P. Rajesh
5 & 6 sons of
Balagangadharan Nair

7. Smt. Kunhikutty Amma
W/o. Late Kannan Kutty Nair
M/o. Balagangadharan Nair
1 to 7 residing at
Thulasi Veetil
P.O. Nadavathu
Thiruvalli Amsam
Malappuram District
1 to 7 rep by thier
power of Attorney Agent
Mr.P.S. Seban S/o. Sebastin
No.1/4 30 Kamaraj Naar
Gudalur Taluk, The Nilgiris Dt. ... Appellants

Vs

1. The Tahsildar
Gudalur, The Nilgiris Dt.

2. The Assistant Settlement Officers
Dharapuram ... Respondents

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

STA 22 of 2003

1. Smt. Valasala
W/o. Balagangadharan Nair

2. Smt. P. Rajani
3. Smt. P. Radhika
4. Smt. P. Rekha
2 to 4 daughters of
Balagangadaran Nair

5. P. Ramesh
6. P. Rajesh
5 & 6 sons of
Balagangadharan Nair

7. Smt. Kunhikutty Amma
W/o. Late Kannan Kutty Nair
M/o. Balagangadharan Nair
1 to 7 residing at
Thulasi Veetil
P.O. Nadavathu
Thiruvalli Amsam
Malappuram District
1 to 7 rep by thier
power of Attorney Agent
Mr.P.S. Seban S/o. Sebastin
No.1/4 30 Kamaraj Nagar
udalur Taluk, The Nilgiris Dt.
... Appellants

Vs

1. The District Forest Officer,
Gudalur, The Nilgiris Dt.

2. The Assistant Settlement Officer
Dharapuram ... Respondents

WEB COPY

S.T.A.No.1 of 2004

S. Shanmugam ... Appellants

Vs

1. The District Forest Officer,
Gudalur Division,
Gudalur
The Nilgiris.

https://hcservices.ecourts.gov.in/hcservices/

2. The Assistant Settlement Officer
Dharapuram.

3. Erranikkal Veeran Kutty
S/o. Koyam
Mampad
Malapuram.

4. K.K. Ithapiri
S/o. Kurian
Kallapara House
Ellamalai.

5. Gangatharan
s/o. Krishnan Nair
Girija Nivas, Gudalur
The Nilgiris. ... Respondents

Contempt Petition No.540/2004

1. P. Valsala
2. P. Rajani
3. P. Radhika
4. P. Rekha
5. P. Ramesh
6. P. Rajesh
7. P. Kunnhikutty Amma
all the above petitioners are
rep by their Power Agent P.s. Seban
No.1/4 No.30 Kamaraj Nagar
Gudalur Taluk,
The Nilgiris District. ... Petitioners

Vs

Thiru Sewa Singh I.F.S
The District Forest Officer
Gudalur
Nilgiris District. ... Respondent

WEB COPY

Special Tribunal Appeal filed under Section 41 of the Gudalur Janmam Estate (Abolition & Conversion into Royatwari) Act 24/1969, against the common judgment and decree dated 04.06.2003 made in CMA.Nos.9 of 1999 and 16 of 1999, C.M.A.7, C.M.A.1, C.M.A.14, C.M.A.15, C.M.A. 6, C.M.A. 1, C.M.A. 4, C.M.A. 18, C.M.A.11, C.M.A. 10, C.M.A. 3, C.M.A. 17, C.M.A. 12, C.M.A. 5, C.M.A. 4/1999 respectively on the file of Janmam Estate Abolition Tribunal and District Judge of Nilgiris at Ootacamund, reversing the order dated

https://hcservices.ecourts.gov.in/hcservices/

24.12.1998 and 11.11.1998, 23.12.1998, 9.11.98, 30.12.1998 passed in S.R.No.1 of 1995 R.O.C.B/498/98, Sr. 7/80, R.O.C.B/1883/93 S.R. 7/80 respectively on the file of the Assistant Settlement Officer, Dharapuram.

Contempt Petition No. 540/2004 :- Petition filed under Section 10 & 12 of Contempt of Courts Act to punish the respondent for the contempt of court committed by him for his wilful disobedience to implement the order passed in S.T.P.No.32/2003 in S.T.A.No.22/2003 dated 12.11.2003.

Mr. J. Ravindran, for appellant in STA.No.7/2003.

Mr. T. Srinivasa Raghavan, for appellant in STA.Nos.8, 11, 12, 14, 16 and 17/2003.
Mr. N. Doraikannan, for appellant in STA.No.9&10/2003.
Mrs. A.V.Bharathi,for appellant in STA.Nos.13 & 15/03.
Mr. S.V. Jayaraman, Senior counsel for Mr. S. Raghu, for appellant in STA.Nos.20 & 22/03 and for petitioner in contempt petition No.540 of 2004.
Mr. S. Ramasamy, Additional Advocate General-II assisted by Mr. Titus Jesudoss, for respondents in all the appeals.
Mr. P.P. Rajendran, for 3rd respondent in STA.No.13/03.
No appearance for appellant in STA.Nos.18 & 19/03.

COMMON JUDGMENT

(Judgment of the Court delivered by P. SATHASIVAM,J.)

Since the issues involved in all these appeals are identical, they are being disposed of by the following common order.

2. In the light of the order to be passed hereunder, we are of the view that there is no need to refer all the factual matrix as stated by both parties.

3. For convenience, we shall refer the parties as arrayed before the Original Authority, viz., the Assistant Settlement Officer.

4. The appellants/claimants in all the above appeals applied for grant of ryotwari patta to the Assistant Settlement Officer (in short, "A.S.O."), Dharapuram under the provisions of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act (XXIV of 1969). The claimants before the A.S.O. produced and placed several documents, such as, lease deeds, rent receipts/pattam receipts, bills for sale of agricultural produces in support of their claim regarding possession and occupation of lands in question. According to the learned counsel for the appellants, the A.S.O. on consideration of

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

those documents and after making personal inspection, found that the claimants are entitled to patta, and accordingly, granted ryotwari patta in respect of the lands mentioned therein.

5. Aggrieved by the said order of the A.S.O. the respondents therein, viz., the District Forest Officer and the Tahsildar, Gudalur, preferred individual appeals before the Janmam Estate Abolition Tribunal and District Court, The Nilgiris, Ootacamandalam. The Tribunal, considering the order of the Supreme Court in the case of Smt. Gangabai vs. Vijayakumar (AIR 1974 SC 1126), which deals with preservation of forest lands and after observing that the claimants have not marked specific documents before the A.S.O. in support of their claim, accepted the stand taken by the District Forest Officer and the Tahsildar, Gudalur, set aside the order of A.S.O. granting patta and allowed all the appeals. In those circumstances, challenging the order of the Tribunal, the claimants preferred the above appeals.

6. We heard the learned counsel for the appellants as well as respondents.

7. Mr. S.V. Jayaraman, learned senior counsel as well as the other counsel appearing for the appellants mainly contended that in spite of the fact that all the relevant documents, such as, lease deeds, pattam receipts, bills for sale of agricultural produces, rental receipts, etc., were available with the A.S.O. the Tribunal without adverting to the same, merely based on the order of the Supreme Court (AIR 1974 SC 1126 - cited supra), set aside the order of A.S.O. and allowed the appeals filed by the District Forest Officer and the Tahsildar, Gudalur. According to them, all the documents produced by the claimants/appellants are available along with other records, it is, but, proper on the part of the Tribunal, which is an appellate authority, to verify the same and give a finding one way or the other. It is their further grievance that in spite of acceptable volumness documents, the Tribunal, committed an error in setting aside the order of A.S.O. granting patta in favour of the claimants.

8. In the light of the above submissions, we carefully verified the orders passed by the A.S.O. as well as the Tribunal. A perusal of the order of the A.S.O. shows that the claimants have produced (i) lease deeds; (ii) pattam receipts; (iii) bills for sale of agricultural produces from the year 1966 onwards; (iv) rent receipts; (v) building tax receipts; (vi) balance sheet of respective companies; (vii) certified copy of the survey map, demarking the boundaries of area; and (viii) possession certificate from the Village Administrative Officer. While considering the claim of the claimants, the A.S.O. heavily relied on those documents and after making local inspection, accepted their case, and granted ryotwari patta to them.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

9. Now, let us consider the order of the Tribunal. Though an objection was raised by the claimants regarding maintainability of the appeal by the District Forest Officer and the Tahsildar, ultimately, the learned District Judge, after finding that the appellants therein (District Forest Officer and the Tahsildar) are aggrieved persons and in order to protect the forest lands, gave a finding that the appeals filed by them are maintainable and rejected the objection of the claimants. Even before us, there is no serious dispute as to the finding relating to maintainability of the appeals filed by the Officers.

10. We also verified the entire order of the Tribunal. As rightly pointed out by the learned counsel for the appellants, except referring the order of the Supreme Court (AIR 1974 SC 1126 - cited supra) relating to preservation of forest lands, there is no discussion at all as to the documents/materials produced by the claimants before the A.S.O. In more than one place, the learned Judge, has commented the A.S.O. for not marking those documents as exhibits. Likewise, in many places, he doubted the finding/conclusion arrived at by him. If the learned Judge has doubt as to the correctness of the order of the A.S.O. or in his view the order of A.S.O. is bereft of required materials, he could very well call for report as to the availability of the documents mentioned above and filed by the claimants. As stated earlier, before us all the counsel appearing for the appellants asserted that those documents are even now available in the Office of the A.S.O. The Tribunal, being an appellate authority and the claim of the claimants for ryotwari patta is based on possession and occupation of the lands, it is, but, proper on the part of the Tribunal either to call for a report from A.S.O. or send for those documents to satisfy himself in order to give a definite finding. Unfortunately, such recourse has not been followed by the Tribunal. Instead, it concentrated only in referring the order of the Supreme Court and complemented the counsel who appeared on either side.

11. As regards non-consideration of the relevant documents/materials, learned Additional Advocate General fairly states that the proper course is to direct the Tribunal to reconsider the matter in issue and take a decision one way or the other. Though the learned counsel for the appellants furnished several details in support of their claim, we are of the view that it is for the appellate authority to consider and take a decision one way or the other; hence, we desist from probing those documents. From the materials available, we are satisfied that the appellate Tribunal has not adverted to the factual details/materials placed by the claimants and committed an error in setting aside the order of A.S.O. It is made clear that we are not underestimating the power of the Government/Government officials in safeguarding the forest wealth, but at the same time, the Tribunal being an appellate authority, is

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

duty bound to verify and give a finding with reference to the documents produced by the parties one way or the other. Even if those documents are not marked by A.S.O. as an appellate authority, the Tribunal can very well call for a report as to the existence/availability of those documents. If those materials are not available and does not support the case of the claimants, the Tribunal is free to pass appropriate orders. On this ground, we inclined to set aside the order of the Tribunal and remit all the matters to the Tribunal for fresh disposal.

12. Under these circumstances, the order passed by the Tribunal in the respective Civil Miscellaneous Appeals are set aside and the matter is remitted back to the Tribunal for fresh consideration. The Tribunal is directed to restore all the appeals on its file and dispose of the same afresh, after affording opportunity to all the parties. As said earlier, and in view of the assertion of the appellants/claimants, all the documents are available with the A.S.O. it is for the Tribunal to verify/call for a report/send for the same, in order to arrive a definite conclusion. In view of the assertion of the appellants that they are in possession and enjoyment of the lands in question, both parties are directed to maintain status quo prevailing as on date. Considering the nature of relief sought for, the Tribunal is directed to pass fresh orders as mentioned above within a period of six months from the date of receipt of a copy of this order.

All the appeals are allowed to the extent mentioned above. No costs. Consequently, connected contempt petition and the miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kh

WEB COPY

To

1. The District Judge,
The Janman Estate Abolition Tribunal
Ootachamund,
Nilgiris District.

2. The Assistant Settlement Officer,
Dharapuram.

https://hcservices.ecourts.gov.in/hcservices/

3.The Tahsildar, Pandalur
The Nilgiris District.

4.The District Forest Officer
Gudalur Division
Gudalur Division, Nilgiris District.

2 ccs to Mr.N. Dorai kannan, Advocate, SR. 24154, 24153
1 cc to Mrs. A.V. Bharadhi, Advocate, sr. 24005
1 cc to Mr.S. Raghu, Advocate, Sr. 24926
1 cc to Mr.K.P. Sanjeev Kumar, Advocate, sr. 24729
1 cc to Mr. P.P. Rajendran, Advocate, Sr. 24215
1 cc to spl. Government Pleader (Forests) Sr. 24425
6 ccs to Mr.T. Srinivasaraghavan, Advocate, Sr. 23990, 23989, 23988, 23987, 23986, 23985

S.T.A.Nos. 7 to 20/03 etc.,

MDR (CO)
kk 4/5

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/